



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

JERRY FITZGERALD ENGLISH
Chair

AMOS C. SAUNDERS
Vice Chair

ALBERT BURSTEIN
Commissioner

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JEFFREY M. BRINDLE
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Deputy Director

CAROL L. HOEKJE
Legal Director

EVELYN FORD
Compliance Director

JAMES P. WYSE
Legal Counsel

PUBLIC SESSION MINUTES

March 23, 2010

Chair English, Vice Chair Saunders, Commissioner Burstein, Legal Counsel Wyse, and Senior Staff were present. Report Review Officer Lovinsky Joseph was present for the purpose of recording the minutes.

The meeting convened at 10:00 a.m. in Trenton.

1. Open Public Meetings Statement

Chair English called the meeting to order and announced that pursuant to the "Open Public Meetings Act," N.J.S.A. 10:4-6 et seq., adequate notice of the meeting of the Commission had been filed with the Secretary of State's Office and distributed to the entire State House Press Corps. It was also posted on the Commission's website.

2. Approval of Public Session Minutes of February 16, 2010

On a motion by Commissioner Burstein, seconded by Chair English and passed by a vote of 2-0, the Commission approved the Public Session Minutes of February 16, 2010. Commissioner Saunders abstained from this vote.

At this juncture, the Chair recognized former Vice Chair Peter Tober, who was present for the meeting. Chair English thanked him for the wisdom and experience that his presence brought to the Commission from the beginning of his tenure in 2001.

She praised Mr. Tober's promotion of ideas to better the Commission, defense of neutrality, concern for the well-being of staff, and guarding the independent status of the Commission as Vice Chair.

The Chair presented Mr. Tober with a proclamation recognizing his achievements at the Commission. He thanked Chair English, who invited him to visit again at any time.

Commissioner Saunders stated that it was a pleasure to see Mr. Tober, and wished him good luck in his future endeavors.

Commissioner Burstein congratulated Mr. Tober on his accomplishments.

Mr. Tober stated that it was an honor and a privilege to have worked for the Commission and help maintain its good reputation.

Chair English announced that the vacancy for the position of Vice Chair necessitated nomination and election of a replacement. The Chair asked if there were any nominations for the position.

Commissioner Burstein nominated Commissioner Saunders for the position of Vice Chair.

Chair English seconded the nomination.

The Chair related how she had come to know Commissioner Saunders while reviewing his 1977 appointment as a Judge by Governor Byrne. She recognized Commissioner Saunders for his distinguished career as a lawyer and as a judge, and for his continued service with the Commission after retirement.

Commissioner Saunders stated that he would recuse himself from this vote. He noted that he initially preferred Commissioner Burstein to be nominated for the position of Vice Chair because of his greater seniority, but that he recognized the importance of maintaining a bipartisan balance.

On a motion from Commissioner Burstein, seconded by Chair English and passed by a vote of 2-0, the Commission approved the appointment of Commissioner Saunders as Vice Chair.

Chair English stated the valuable assistance of Mr. Tober in the Wayne Bryant advisory opinion decision and in helping to find an appropriate successor to Executive Director Frederick M. Herrmann.

Mr. Tober noted that Commissioner Burstein had helped complete those matters.

At this juncture, Mr. Tober offered his farewell and departed from the meeting.

3. Executive Director's Report

A. Lobbyist Press Release

Executive Director Brindle informed the Commissioners of this extensive analytical press release issued on March 10, 2010.

The Executive Director recognized Deputy Director Donohue for his efforts in producing the lobbyist press release. He noted that the press release had been well received by the public and press. The Executive Director acknowledged the Data Entry staff and Compliance staff for their help with this project.

Executive Director Brindle reported that total spending had increased 1% to a total of \$56.4 million. He added that this was the fourth consecutive year that lobbying financial activity remained around \$55 million.

The Executive Director further reported that benefit passing had decreased 56% to a total of \$9,729, and communications expenses had increased 53% to a total of \$6.1 million.

Executive Director Brindle hypothesized that the general decrease in lobbying expenses was due to a combination of the underperforming economy, the changing nature of lobbying into more diverse forms, and officials becoming more sensitive to the concerns of the public.

B. Recognition of Staff

The Executive Director recognized the following Data Entry staff members for their efforts in organizing the data vital for production of analytical press releases, the local contributor database, and other informational services and products for the general public: Data Entry Supervisor Brenda Brickhouse, Assistant Data Entry Supervisor Darlene Kozlowski, Senior Data Entry Technician Shirley Bryant, Associate Data Entry Technician Nelly Rosario, Associate Data Entry Technician Barbara Counts, Associate Data Entry Technician/Secretary Pam Kinsey, Associate Data Entry Technician Helen Kelly, Assistant Data Entry Technician Tamika McCoy, Assistant Data Entry Technician Susan Danley, and Data Entry Technician Tamico Flack.

Chair English stated that Deputy Director Donohue, as a former member of the press, could appreciate the importance of the Data Entry staff's work to public disclosure.

Deputy Director Donohue stated that was the case, and that quality control of data organization was very important, especially as reporters at present have less time to check the accuracy of data themselves.

Executive Director Brindle also recognized Compliance staff members for their efforts in verification of figures and calculations: Director of Lobbying Linda White, Senior Compliance Officer Kim Key, Associate Compliance Officer Nancy Fitzpatrick, Assistant Compliance Officer Danielle Hacker, and Assistant Compliance Officer Christopher Vigale. He also commended them on maintaining their morale despite current budgetary difficulties.

Chair English declared that the work of staff brought force to the Open Public Meeting statement read before each meeting.

The Chair thanked staff and stated that she had great confidence in their professionalism.

C. Budget

Executive Director Brindle informed the Commissioners of the budget status for Fiscal Year 2011. He reported that the allocated amount of \$4.191 million was nearly the same as the figure for the previous year (\$4.275 million).

The Executive Director stated that a loss of \$84,000 could be offset by lobbying fees. He anticipated that the Commission would be able to maintain its current level of service.

Executive Director Brindle reported that he had been invited to attend an Assembly budget committee meeting for Law & Public Safety on April 19, 2010, and a Senate budget committee meeting on May 4, 2010 with Attorney General Paula Dow.

The Executive Director did not anticipate any major issues to emerge at the meetings.

Chair English stated that she was pleased that Commissioner Burstein had agreed to attend previous budget hearings, and inquired if he could do so again this year to provide representation for the Commission.

Commissioner Burstein stated that he would attend if there were no conflicts with his schedule.

The Chair replied that the recently concluded gubernatorial race may provoke a number of questions at the meeting that members of the Assembly may seek to ask a representative of the Commission.

D. New Jersey Supreme Court Decision

Executive Director Brindle informed the Commissioners of the unanimous decision rendered by the New Jersey Supreme Court on March 8, 2010. This ruling upholds the Commission's 2008 Advisory Opinion No. 1 barring former Senator Wayne Bryant from using campaign funds to pay for criminal defense expenses.

The Executive Director acknowledged Legal Director Carol Hoekje for her work in preparing the Advisory Opinion and Legal Counsel Wyse for representing the Commission before the court.

Legal Counsel Wyse stated that he was very pleased with the decision, and anticipated that its clarity would help the Commission in the future.

Vice Chair Saunders stated that the decision was important as it provided a definitive answer to the question.

Legal Counsel Wyse noted that the decision was strongly based in the statute, which would facilitate more effective implementation.

Legal Director Hoekje agreed with Legal Counsel Wyse.

Chair English stated that maintaining the integrity and good track record of institutions were important.

The Chair commended Executive Director Brindle and Deputy Director Donohue for releasing a special edition of the electronic newsletter following the decision. She added that the decision was a fitting conclusion for all the work invested in the case since 2008.

E. Attorney General and U.S. Attorney Training in Campaign Finance Law

Executive Director Brindle noted that the Commission was gaining a public perception as a partner in the anti-corruption movement in New Jersey.

The Executive Director reported that the Commission was reaching out to the Attorney General and U.S. Attorney to facilitate campaign finance law training sessions, recognizing the intersection between campaign finance and corruption investigation.

F. Treasurer Training

Executive Director Brindle informed the Commissioners of a treasurer training session to be held at the Robert Treat Hotel in Newark on April 1, 2010 at 7:00 PM in preparation for the May Municipal election.

The Executive Director also reported that the Commission would hold ten in-house training sessions between now and the general election.

G. Legislature and Agency Leadership Meetings

Executive Director Brindle informed the Commissioners that he had had positive dialogue with the legislative leadership of both parties as well as Attorney General Paula Dow and Authorities Director Debra Gramiccioni. He reported that the Commission's legislative initiatives were generally well received.

The Executive Director noted that Legal Director Hoekje attended the meeting with Attorney General Dow and Deputy Director Donohue and Director of Finance and Administration Steven Dodson attended the meeting with Authorities Director Gramiccioni.

H. Legislation

Executive Director Brindle informed the Commissioners of legislation to be introduced regulating "527" committees whose election communications are currently exempt from rules as long as such communication contains no explicit language urging the support or defeat of a candidate. He noted that the recent U.S. Supreme Court decision of Citizens United v. FEC stated that speech was not limited to advocacy.

The Executive Director also reported on proposals to simplify and standardize pay-to-play regulation, in which the two-tier division between local and state laws has created confusion.

Executive Director Brindle also informed the Commission on proposals to curb the practice of "wheeling," eliminate the "fair and open" exclusion in the pay-to-play law, and a new proposal raising the minimum threshold for detailed reporting of contributions from \$300 to \$1,000. He added that the higher threshold would be offset by increased disclosure, as all business entities would be required to report contributions.

The Executive Director inquired whether a vote was necessary to approve the new proposal.

Commissioner Burstein and Vice Chair Saunders agreed that the \$300 threshold was too low.

Commissioner Burstein stated that increased disclosure was necessary in the wake of Citizens United v. FEC.

Legal Director Hoekje suggested that the Commission may wish to postpone the vote until a vote had been taken on sunset regulations.

The Commission agreed to table the vote on the new proposal for a later date.

I. Spring/Summer Meeting Schedule

- April 20, 2010 at 10:00 a.m. in Trenton;
- May 18, 2010 at 11:00 a.m. in Trenton; and,
- June 15, 2010 at 11:00 a.m. in Trenton.

Chair English expressed concern about whether there would be sufficient time for the Public Financing Public Hearing scheduled for April 20, 2010.

Special Programs Director Amy Davis stated that the date and time had already been published in the New Jersey Register.

Chair English praised Executive Director Brindle's outreach to State officials and maintaining the positive reputation of the Commission.

The Executive Director reported that over 1,000 individuals were on the Commission's newsletter mailing list.

4. Update on 2009 Gubernatorial Primary and General Election Public Financing Program

Special Programs Director Amy Davis reported on the status of a request for additional information approved by the Commission at its January 19, 2010 meeting into higher than average ballot reimbursement costs in the claims submitted by Bergen and Ocean County.

Director Davis presented correspondence from the Bergen and Ocean County Clerk in response to the request.

The correspondence from Bergen County Deputy Clerk Joyce SanFilippo cited the county's large population, large number of voting districts, and requirement to print sample ballots in English and Spanish as reasons for higher reimbursement costs. Deputy County Clerk SanFilippo also noted that the costs incurred for the 2009 gubernatorial election were lower than in 2005 because of the use of a new printer with its own mailing department.

The correspondence from Ocean County Clerk Carl W. Block stated that the inability of the county's in-house printing machine to accept paper large enough to contain the increased amount of information on the sample ballot necessitated the use of a more expensive outside vendor. County Clerk Block also reported that the larger sample ballots also increased mailing costs.

Special Programs Director Davis asked the Commissioners if they were satisfied with the responses.

Vice Chair Saunders replied that neither party had provided a complete explanation. He stated that although Ocean County officials had cited the more expensive costs of a private vendor, there was no explanation for why the per-unit cost was so high despite a competitive bidding process.

Commissioner Burstein stated that the explanations offered by the Bergen and Ocean County clerk were incomplete and failed to address the high per-unit cost of sample ballots. Commissioner Burstein stated that he was in favor of eliminating the posting requirements due to the high costs involved.

Chair English questioned whether or not eliminating ballot statements could be injurious to minor party candidates.

Director Davis noted that the ballot statements were a statutory requirement for general elections and not primaries. She also noted that the Commission was statutorily obligated to pay ballot reimbursement costs and to return unspent public funds to the State.

The Chair stated that the Commission needed to preserve the integrity of the process.

Commissioner Burstein suggested that the Commission reimburse Bergen and Ocean County, but afterward investigate whether the Commission has the authority to mandate competitive bidding.

On a motion by Commissioner Burstein, seconded by Vice Chair Saunders, and passed by a vote of 3-0, the Commission approved the reimbursement of ballot statement expenses to Bergen and Ocean County.

Vice Chair Saunders requested that staff ask the Bergen County Clerk for competitive bid information. He noted that printers often provide a lower price per unit for larger orders, but the Bergen County rate remained high despite having the largest number of registered voters in the state.

The Chair requested that staff send a request for information to all county clerks asking whether printing was done in-house or outside, and to determine if competitive bidding was used for outside printing services.

Chair English asked Special Programs Director Amy Davis how preparations for the Public Financing Public Hearing were proceeding.

Director Davis replied that notice of the hearing had been published in the New Jersey Register, in the New Jersey Law Journal, and issued to other interested parties.

The Director reported that responses had been received and members of the public would testify at the hearing.

Director Davis informed the Commissioners that the hearing would commence at 11:15 AM, and that all guests would be able to testify and share their thoughts on the Public Financing Program, suggest improvements, and ask questions of the Commission.

Chair English stated that she would like to see a discussion of the debate issues and the timing of the debates.

Director Davis noted that she had invited all debate sponsors.

Commissioner Burstein suggested that it could be a good idea to invite representatives from the Corzine campaign in order to gain their perspective as participants outside the system.

Director Davis replied that representatives of all campaigns had been invited to testify.

5. Adoption of “Sunset” Proposal with Proposed Amendments and New Rule

Legal Director Carol Hoekje stated that the “sunset” proposal was now ripe for adoption. She noted that Special Programs Director Amy Davis and Associate Legal Director Michelle Levy were also present to answer any inquiries.

Legal Director Hoekje stated that the proposal had been published in the New Jersey Register, that notice was issued to the public, and that a public hearing was held on February 16, 2010. She stated that two written comments were received by the Commission before the February 19, 2010 deadline for receipt of written comments.

Legal Director Hoekje stated that the first written comment was submitted by Stephen Adzima, Jr., who wrote that any donations under \$500 should not have to be “reportable.” The Legal Director suggested that the commentator may have meant that contributions under \$500 should not be considered “reportable by the recipient” for pay-to-play requirements.

Legal Director Hoekje suggested the response that the Commission does not have the discretion to raise the reporting thresholds to amounts higher than those established in the Reporting Act for reporting of detailed contributor information.

Legal Director Hoekje stated that the second written comment was submitted by Edward J. Buzak, Esq. He wrote that he did not believe that the Legislature, in enacting both the pay-to-play legislation and the currency reporting legislation intended that the restrictions of the latter should apply to the former.

The Legal Director suggested the response that the language of the pay-to-play statutes clearly refers to contributions “reportable by the recipient” under the Reporting Act, that the legislative history provides no exemption for the reporting of currency contributions, and that the Commission’s proposed amendments are consistent with the requirements of the entire Reporting Act.

Legal Director Hoekje stated that while the Commission recognized the increased burden of reporting requirements, this burden was outweighed by the benefit of increased disclosure and transparency.

Vice Chair Saunders stated that he understood the reasoning, but believed that the result seemed not to make sense if currency contributions in any amount were prohibited but contributions of \$300 or less by check were not.

Commissioner Burstein agreed with Vice Chair Saunders, but stated that it was better to prevent the emergence of a loophole.

Chair English asked how the Commission could simplify the reform legislation.

The Executive Director noted that the current state law allows local jurisdictions to make their own ordinances. He stated that this concern could be brought before legislative sponsors.

Legal Director Hoekje informed the Commissioners that they could choose to adopt the Sunset proposal without adopting the proposed amendments at this time.

The Chair asked if the regulation was timely and assisted the public.

Special Programs Director Davis suggested that the contradictions in the law had been noted, but it was better to err on the side of caution and consider contributions reportable when in doubt.

Commissioner Burstein proposed that the response letter should suggest that Mr. Buzak bring his concerns to the Legislature, which has the authority to resolve the regulatory dissonance he observed.

Commissioner Burstein added that the Commission should note that it only has the authority to interpret the law. He questioned if the Legislature had considered preexisting law when passing pay-to-play regulation.

Legal Director Hoekje suggested that the Commission could table a vote on amendments.

Commissioner Burstein stated that tabling the vote would leave filing entities with no direction.

Special Programs Director Davis stated that the Commission could adopt and allow the Legislature to resolve the problem.

Vice Chair Saunders asked if the Commission should leave the task of resolving the contradiction to the Legislature.

Executive Director Brindle stated that he could mention the problem in future meetings with legislative leadership.

The Executive Director asked if the matter of vendor cash contributions would be a widespread problem.

Special Programs Director Davis noted that business entities were more likely to make contributions by check.

Chair English asked if the Commission was assisting the process by enacting the new rule.

Commissioner Burstein replied that the Commission must do what the law requires despite inconsistency. He stated that the immediate concern was to adopt the regulations to provide guidance. He stated that the concerns require a legislative response, in order to make a cohesive regulation framework out of this patchwork.

On a motion by Commissioner Burstein, seconded by Vice Chair Saunders and passed by a vote of 3-0, the Commission voted to approve the amendments contained in the “sunset” proposal concerning the definition of currency contributions as “reportable under subchapters 24, 25, and 26. The Commission directed the Executive Director to take the concerns as expressed and discussed to the Legislature.

On a motion by Commissioner Burstein, seconded by Vice Chair Saunders and passed by a vote of 3-0, the Commission voted to approve the balance of remaining items contained in the “sunset” proposal.

Chair English recognized Associate Legal Director Levy for her work with the “sunset” proposal.

The Chair also thanked Mr. Buzak for providing a thought-provoking comment to the Commission.

6. Legislative Priorities - continued

Returning to the earlier discussion of legislative priorities, the Chair stated that the Commission agreed with the legislative priorities as submitted by the Executive Director.

7. Resolution to go into Executive Session

On a motion by Vice Chair Saunders, seconded by Commissioner Burstein and passed by a vote of 3-0, the Commission resolved to go into Executive Session to discuss anticipated litigation, which will become public as follows:

- A. Final Decision Recommendations in violation proceedings which will not become public. However, the Final Decisions resulting from those recommendations will become public not later than seven business days after mailing to the named respondents.
- B. Investigative Reports of possible violations, which reports will not become public. However, any complaint generated as the result of an Investigative Report will become public not later than seven business days after mailing to the named respondents.

8. Adjournment

The Chair directed the meeting be closed at 1:15 PM.

Respectfully submitted as true
and correct,

Jeffrey M. Brindle
Executive Director

JMB/elz